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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/903,255	07/11/2001	Carl-Eric Kaiser	CM2388	9451

27752 7590 12/20/2005

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EXAMINER	
MCKANE, ELIZABETH L	
ART UNIT	**PAPER NUMBER**
1744	

DATE MAILED: 12/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/903,255	KAISER, CARL-ERIC	
	Examiner	Art Unit	
	Leigh McKane	1744	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *12 October 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-18* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-18* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

Claim Rejections - 35 USC § 102

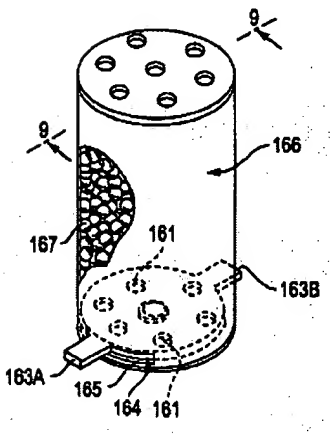
1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

2. Claims 13, 14, and 16 are rejected under 35 U.S.C. 102(a) as being anticipated by Warren et al. (WO 99/47182).

Warren et al. teaches a device comprising a rigid container **166** containing perfumed, uniform-sized spherical particles **167** emitting perfume outside the container **166**. See Figures 8 and 9; page 9, lines 23-27. At least some of the perfume ingredients have a boiling point of greater than about 250 °C and a ClogP of greater than 3 and at least some but less than about 30% of the perfume ingredients have a boiling point of less than about 250 °C and a ClogP of less than about 3. See page 10, lines 24-30; page 11, line 21 to page 12, line 7.

FIG.8



Claim Rejections - 35 USC § 103

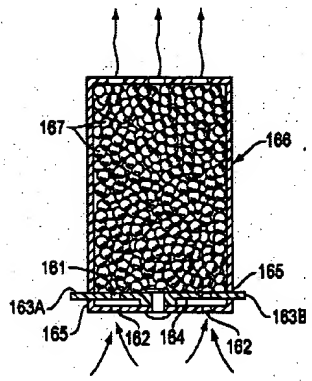
3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 1-6, 8-10, 12, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Warren et al. in view of Kurz (DE 19532169).

Warren et al. teaches a process of deodorizing and/or fragrancing an environment wherein a device is placed inside the environment. See page 1, lines 12-17. The device of Warren et al. comprises a rigid container **166** containing perfumed, uniform-sized spherical particles **167** emitting perfume outside the container **166**. The particles are polymeric particles containing a perfume ingredient. See Figures 8 and 9; page 9, lines 11-14 and 23-27. At least some of the perfume ingredients have a boiling point of greater than about 250 °C and a ClogP of greater than 3 and at least some but less than about 30% of the perfume ingredients have a boiling point of less than about 250 °C and a ClogP of less than about 3. See page 10, lines 24-30; page 11, line 21 to page 12, line 7. Moreover, as illustrated in Figure 9, the container includes holes of different sizes. Note that holes **161** are smaller than the holes on the top of the container.

FIG.9



Warren et al. does not specifically teach using the device to deodorize or fragrance an environment which is sometimes wet and sometimes dry. Kurz, however, discloses use of a perfume dispenser within a sauna, an environment which is sometimes wet and sometimes dry, wherein the dispenser includes a source of perfume **23** and a label **27** with writing thereon.

As Kurz has already evidenced the need to deodorize the air within a sauna environment and as Warren discloses a device for effective, long-term air deodorizing, it would have been obvious to one of ordinary skill in the art to employ the air deodorizing device of Warren et al. in other environments in need of deodorization, such as saunas.

The limitations within the phrase "usage instructions to place said device inside an environment" (claims 2 and 3) are not given any patentable weight because the claim language refers to the pictures or markings on a material and these features are not held to be patentable (see M.P.E.P. 706.03(a)). Therefore, the claims have been interpreted to include any writing. As the label of Kurz includes writing thereon, it meets the claim limitations. As to including writing and/or a label on the device of Warren et al., it is known in the art to place labels indicating the name of the product, ingredients, price, etc. on consumer products and would have been obvious in Warren et al..

Although Warren et al. does not specifically teach that the holes on the top of the container be smaller than the particle size, it is clear that the holes **161** on the bottom of the container **166** are. Nevertheless, it is deemed obvious to one of ordinary skill in the art to fabricate the container **166** such that both sets of holes are smaller than the particle size in order to prevent loss of the particles if the container tips over.

With respect to the amount of treatment material to be included within the apparatus of Warren et al., it is deemed obvious to optimize the amount based upon the desired effect of the device and based upon the particular treatment material used.

5. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Warren et al. and Kurz as applied to claim 3 above, and further in view of Meek (U.S. Patent No. 2,738,225).

Warren et al. discloses a container which is openable and recloseable by a bottom closure **165**, but fails to teach a means of closing the top once it is opened. Meek, however, teaches an air deodorizing device including a container which may be fabricated of rigid materials (col.2, lines 40-43) and is openable and closeable by sliding sleeve **14** in order to prevent escape of

volatilizable material from the container during nonuse. For this same reason it would have been obvious to provide a means for reclosing the contain of Warren et al..

6. Claims 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Warren et al..

Warren et al. teaches a device comprising a rigid container **166** containing perfumed, uniform-sized spherical particles **167** emitting perfume outside the container **166**. See Figures 8 and 9; page 9, lines 23-27. At least some of the perfume ingredients have a boiling point of greater than about 250 °C and a ClogP of greater than 3 and at least some but less than about 30% of the perfume ingredients have a boiling point of less than about 250 °C and a ClogP of less than about 3. See page 10, lines 24-30; page 11, line 21 to page 12, line 7.

Since Warren et al. discloses using different perfumes within a single container, it is deemed obvious to provide the different perfumes in the form of different particles, as doing so involves no invention over the teachings of Warren et al..

With respect to the amount of treatment material to be included within the apparatus of Warren et al., it is deemed obvious to optimize the amount based upon the desired effect of the device and based upon the particular treatment material used.

Response to Arguments

7. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leigh McKane whose telephone number is 571-272-1275. The examiner can normally be reached on Monday-Thursday (5:30 am-2:00 pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Crispino can be reached on 571-272-1226. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Leigh McKane

Leigh McKane
Primary Examiner
Art Unit 1744

elm
14 December 2005